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No. 93-245

In the Supreme Court of the United States

OCTOBER TERM, 1993

JAMES WILLIAM RINIER AND CARMELLA FORZIATI,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the federal income tax denies married taxpayers equal protection of the laws because a higher tax is sometimes imposed on persons who are married than on persons with the same incomes who remain single.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a) is unpublished, but the decision is noted at 995 F.2d 218 (Table). The opinion and order of the district court (Pet. App. 2a-5a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 19, 1993. The petition for a writ of certiorari was filed on August 16, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1992, petitioners commenced this action seeking a refund of their 1990 federal income tax payments. They assert that the federal income tax is unconstitutional because it discriminates against persons who are married.[1]

Section 1 of the Internal Revenue Code establishes different tax rate schedules for four different classes of individuals: married individuals who file joint returns and surviving spouses (26 U.S.C. 1(a)); unmarried heads of households (26 U.S.C. 1(b)); unmarried individuals who are not heads of households (26 U.S.C. 1(c)); and married individuals who file separate returns (26 U.S.C. 1(d)).[2] Petitioners contend that the different tax rates imposed on married and single persons under Section 1 of the Code, and the different standard deductions available for married and single persons under Section 63(c) of the Code, unconstitutionally discriminate against married persons.

Although petitioners describe the challenged statutory provisions as effecting a "marriage tax penalty" (Pet. 4), these provisions do not consistently result in harsher tax treatment for married persons. A married couple may owe either more *or* less in tax than they would owe if they had remained single and

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[1] It is undisputed that petitioners were legally married during 1990 and that, on the particular facts of their case, they owed more in income taxes for that year than they would have owed if they had been single during that year (Pet. 6-7).

[2] Petitioners were not required to file a joint income tax return. Married taxpayers have an unrestricted option to file separate returns. 26 U.S.C. 1(d), 6013. As is the case with most married taxpayers, petitioners evidently found it to be to their advantage to file a joint return.

received the same income. If most of the household income is derived by one spouse, the couple will pay *less* taxes if they are married than if they are single. It is only when both spouses earn enough to be in the same, higher tax bracket that they may pay more taxes when married than single. See *Mapes* v. *United States*, 576 F.2d 896, 901-903 (Ct. Cl.), cert. denied, 439 U.S. 1046 (1978); Bittker, *Federal Income Taxation and the Family*, 27 Stan. L. Rev. 1389, 1396-1397, 1430 (1975).

2. The district court held that the differential income tax rates imposed by the Internal Revenue Code for single and married individuals are not unconstitutional (Pet. App. 3a-4a). The court noted that (*id.* at 3a, quoting *Pierce* v. *Commissioner*, 41 T.C.M. (CCH) 580, 581-582 (1980), aff'd, 688 F.2d 823 (3d Cir. 1982) (Table):

> the perplexities of shaping a legislative scheme which distributes the incidence of the personal income tax equitably between married and single tax-payers have confounded Congress for many years.

The constitutionality of the different treatment afforded married and single persons under the Code "has received more than insubstantial attention from the judiciary" (Pet. App. 3a). The district court noted that federal courts uniformly have concluded that the different tax rates and standard deduction provisions for married and single persons under the Code do not deny equal protection to such taxpayers (Pet. App. 3a-4a, citing, *e.g.*, *Druker* v. *Commissioner*, 697 F.2d 46 (2d Cir. 1982) (Friendly, J.), cert. denied, 461 U.S. 957 (1983); *Mapes* v. *United States*, 576 F.2d at 901-903; *Johnson* v. *United States*, 422 F. Supp. 958 (N.D. Ind.

1976), aff'd per curiam *sub nom. Barter* v. *United States*, 550 F.2d 1239 (7th Cir. 1977), cert. denied, 434 U.S. 1012 (1978)). The district court agreed with these consistent decisions, noting that petitioners' contrary arguments based "on policy and sociological grounds * * * have little legal bearing on this issue" (Pet. App. 4a).

3. The court of appeals affirmed the judgment without opinion (Pet. App. 1a).

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. a. Constitutional challenges to the so-called "marriage tax penalty" have been uniformly rejected by the courts. *Brady* v. *Commissioner*, 45 T.C.M. (CCH) 1079 (1983), aff'd, 729 F.2d 1445 (3d Cir. 1984) (Table); *Druker* v. *Commissioner*, *supra*; *Pierce* v. *Commissioner*, *supra*; *Mapes* v. *United States*, *supra*; *Johnson* v. *United States*, *supra*. The courts also have consistently rejected constitutional challenges to the "singles penalty" that sometimes results under these provisions when two single taxpayers owe more taxes separately than they would jointly if married. See, *e.g.*, *Kellems* v. *Commissioner*, 58 T.C. 556 (1972), aff'd per curiam, 474 F.2d 1399 (2d Cir.), cert. denied, 414 U.S. 831 (1973); *Faraco* v. *Commissioner*, 261 F.2d 387 (4th Cir. 1958), cert. denied, 359 U.S. 925 (1959). See also *Ensminger* v. *Commissioner*, 610 F.2d 189, 192-194 (4th Cir. 1979), cert. denied, 446 U.S. 941 (1980) (upholding denial of dependency exemption for woman who lived with taxpayer and was supported by him but was not

married to him). The operation of these provisions does not consistently favor or disfavor either class of taxpayers. See pages 2-3, *supra*.

b. Petitioners err in contending (Pet. 8-11) that this lengthy series of consistent decisions conflicts with *Boyter* v. *Commissioner*, 668 F.2d 1382 (4th Cir. 1981), and with *Hoeper* v. *Tax Commission*, 284 U.S. 206 (1931).[3]

In *Boyter* v. *Commissioner*, the court of appeals held that, under the "sham transaction" doctrine (see note 3, *supra*), it was proper to disregard the claimed "single" status of a married couple who, for two years in a row, obtained foreign divorces at the end of one tax year only to remarry at the beginning of the next tax year. 668 F.2d at 1385-1388. The decision in *Boyter* has no relevance to this case. As petitioners concede (Pet. 6), the legitimacy of their marriage during the relevant period is not in dispute.

In *Hoeper* v. *Tax Commission*, 284 U.S. at 218, this Court held that Wisconsin could not constitutionally tax a husband on the income of his wife because States may not tax "one person for the property of another" (*ibid.*). That holding has no bearing on this case. Married persons have an absolute right to file separate returns under the Internal Revenue Code. See note 2, *supra*. A married person who files a separate return is liable only for the tax due on his

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[3] Petitioners assert (Pet. 8) that the decision in this case conflicts with *Gregory* v. *Helvering*, 293 U.S. 465 (1935). But petitioners cite *Gregory* only as a case embodying the "sham transaction" doctrine (Pet. 10), and we do not understand petitioners seriously to contend that *Gregory* has any direct relevance to the equal protection claim that they assert in this case. Any such contention would be frivolous.

separate income and that tax is computed without regard to the income of his spouse. A married taxpayer who files separately pays the same federal income tax whether his spouse has income of $1000 or $100,000. Moreover, a married person who files separately is not liable for the taxes his spouse may owe. Petitioners' contention (Pet. 10) that "attribution still occurs in substance" under federal law is simply in error.

c. Contrary to petitioners' contention (Pet. 14-15), the decision in this case does not conflict with *Allegheny Pittsburgh Coal Co.* v. *County Commission*, 488 U.S. 336 (1989). That case holds that "[t]he Equal Protection Clause 'applies only to taxation which in fact bears unequally on persons or property of the same class.'" *Id.* at 343, quoting *Charleston Federal Savings & Loan Ass'n* v. *Alderson*, 324 U.S. 182, 190 (1945). Petitioners do not assert that they are being taxed unequally with other married couples with the same income. Instead, they are seeking to be taxed equally with persons who are not married when—because of factors that have no relationship to their marital status (see pages 2-3, *supra*)—that treatment would lower their tax rate.

As this Court explained in *Allegheny Pittsburgh Coal Co.*, 488 U.S. at 343, the Equal Protection Clause requires only "the seasonable attainment of a rough equality in tax treatment of similarly situated" individuals. *Ibid.* If the challenged legislative classification is "neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law." *Id.* at 344, quoting *Brown-Forman Co.* v. *Kentucky*, 217 U.S. 563, 573 (1910).

The legislative classifications at issue in this case are not arbitrary or capricious. The federal income tax is designed to be progressive: for any two individual taxpayers with different taxable incomes, the taxpayer whose income is higher generally must pay a higher percent of his income in tax (the "progressivity" objective). At the same time, the federal income tax seeks to impose the same tax on all married couples with the same *family* income, regardless what portion of that income is contributed by each spouse (the "family equity" objective). These two objectives may work at cross purposes, and differences in the resulting tax burdens of married couples and single persons are inevitable. Depending on the comparative levels of income received by the separate spouses, the income tax paid by a married couple may be (i) less than they would pay if single, in which case there is a "penalty" on single persons; (ii) greater than they would pay if single, in which case there is a "penalty" on married persons; or (iii) unchanged by marriage. See Bittker, *supra*, 27 Stan. L. Rev. at 1395-1396, 1430-1431. As the Second Circuit stated in *Druker* v. *Commissioner*, *supra*, nothing in the Equal Protection Clause requires Congress to "hold fast to horizontal equity, even at the price of imposing a 'penalty' on two-earner married couples" (697 F.2d at 50).

2. Petitioners contend that valid social policies counsel against the current tax differential between married and single persons (Pet. 11-14). As the district court correctly noted (Pet. App. 4a), such arguments are irrelevant to the constitutionality of the policy choice that Congress made in enacting the Code. Arguments concerning the wisdom of social

legislation should be addressed to Congress, not the courts. See, *e.g.*, *Pension Benefit Guaranty Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717, 729 (1984).

Nor does petitioners' discussion (Pet. 15-18) of the passage, and subsequent repeal, of the two-wage-earner deduction support their position. As the district court correctly noted, "[t]o the extent this evinces legislative intent on the issue, it supports the inference that Congress approves the 'marriage tax penalty'" (Pet. App. 4a).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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